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0 M. PROFITT PRODUCTIONS, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN DOE, an individual,
Plaintiff,
vs.
KEVIN SPACEY FOWLER, an
individual, M. PROFITT
PRODUCTIONS, INC., a California
Corporation, and DOES 1-9, inclusive.
Defendant.

) Case No.: 2:19-cv-00750-RSWL (SSx)
)
) **DEFENDANTS' REPLY IN**
) **SUPPORT OF MOTION TO**
) **DISMISS PLAINTIFF JOHN**
) **DOE'S CLAIMS OR,**
) **ALTERNATIVELY, TO**
) **REQUIRE PLAINTIFF TO**
) **PROVIDE A MORE DEFINITE**
) **STATEMENT**
)
) [Fed. R. Civ. P. 12(b)(6), (e)]
)
) Date: April 16, 2019
) Time: 10:00 a.m.
) Dept.: TBD
)
)
) Complaint Filed: September 27, 2018
)

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	LEGAL STANDARD	2
III.	PLAINTIFF FAILS TO SHOW THIS IS AN EXCEPTIONAL CASE FOR WHICH HIS USE OF A PSEUDONYM SHOULD BE ALLOWED, AND HIS FIRST AMENDED COMPLAINT IS DEFICIENT AND SHOULD BE DISMISSED AS A RESULT	3
A.	Plaintiff Has Not Alleged Or Demonstrated That Any Threat Of Severe Harm Exists, That Any Such Fear Is Reasonable, Or That He Has Any Particular Vulnerability.....	4
B.	Plaintiff Has Not Shown And Cannot Show His Use of A Pseudonym Will Not Prejudice Defendants, Who Will Be Severely Inhibited In Defending Against Plaintiff's Allegations If His Identity Remains A Secret	8
C.	Plaintiff Ignores The Public Interest That Requires Plaintiff To Plead In His Own Name Here, and Instead Suggests A New Standard That Would Allow Most Claimants to Litigate Under A Pseudonym	9
IV.	PLAINTIFF DOES NOT AND CANNOT ESTABLISH THAT THE FAC ALLEGES A FACIALLY PLAUSIBLE CLAIM FOR GENDER VIOLENCE AGAINST PROFITT PRODUCTIONS, WHICH IS AN IMPROPER DEFENDANT FOR THAT CLAIM.....	10
V.	CONCLUSION	12

TABLE OF AUTHORITIES

Cases

3	<i>Atieh v. Riordan</i> , 727 F.3d 73 (1st Cir. 2013)	2
4	<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	2
5	<i>Caltex Plastics, Inc. v. Lockheed Martin Corp.</i> , 824 F.3d 1156 (9th Cir. 2016).....	2
6	<i>Clinco v. Roberts</i> , 41 F. Supp. 2d 1080 (C.D. Cal. 1999).....	10
7	<i>Doe v. Apstra, Inc.</i> , 2018 WL 4028679 (N.D. Cal. Aug. 23, 2018).....	2
8	<i>Doe v. Del Rio</i> , 241 F.R.D. 154 (S.D.N.Y. 2006).....	9
9	<i>Doe v. Frank</i> , 951 F.2d 320 (11th Cir. 1992).....	3
10	<i>Doe v. Goldman</i> , 169 F.R.D. 138 (D. Nev. 1996).....	5
11	<i>Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate</i> , 596 F.3d 1036 (9th Cir. 2010)	3, 6, 9, 10
12	<i>Doe v. Rostker</i> , 89 F.R.D. 158 (N.D. Cal. 1981).....	3, 5
13	<i>Doe v. Shakur</i> , 164 F.R.D. 359 (S.D.N.Y. 1996).....	7, 10
14	<i>Doe v. Starbucks, Inc.</i> , 2009 WL 5183773 (C.D. Cal. Dec. 18, 2009)	11
15	<i>Doe v. Texaco, Inc.</i> , 2006 WL 2850035 (N.D. Cal. Oct. 5, 2016).....	4, 9
16	<i>Does I thru XXXIII v. Advanced Textile Corp.</i> , 214 F.3d 1058 (9th Cir. 2000).....	3
17	<i>Femedeer v. Haun</i> , 227 F.3d 1244 (10th Cir. 2000)	5
18	<i>Heram v. United States</i> , 2014 WL 3836912 (E.D. Cal. Aug. 1, 2014).....	3
19	<i>Jones v. Kern High School Dist.</i> , 2008 WL 3850802 (E.D. Cal. Aug. 14, 2008).....	11
20	<i>Roe v. State of New York</i> , 49 F.R.D. 279 (S.D.N.Y. 1970).....	2
21	<i>Shaoxing County Huayue Import & Export v. Bhaumik</i> , 191 Cal. App. 4th 1189 (2011)	11
22	<i>Shroyer v. New Cingular Wireless Services, Inc.</i> , 622 F.3d 1035 (9th Cir. 2010).....	2

Statutes

27	Cal. Civ. Code § 52.4(c)	11
28	Cal. Civ. Code § 52.4(e)	11

1 **Other Authorities**

2 Black's Law Dictionary (10th ed. 2014) 11

3 **Rules**

4 Fed. R. Civ. P. 12(b) 2

5 Fed. R. Civ. P. 12(e) 3

6 Fed. R. Civ. P. 26 8

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1 **I. INTRODUCTION**

2 Plaintiff John Doe has no legitimate reason for prosecuting his claims while
3 hiding behind a pseudonym and violating the rules of this forum. He has not been
4 threatened with *any* harm. He is a 60 year old man who has submitted no evidence of
5 any vulnerability. He chose to bring these claims, yet he continues to withhold his
6 name without justification. Instead, Plaintiff's opposition to Defendants' Motion to
7 Dismiss resorts to imagined threats, irrelevant diatribes, and rumor-mongering to try
8 to prejudice the Court against Mr. Fowler and garner sympathy he believes will allow
9 him to contravene the Federal Rules of Civil Procedure and Ninth Circuit law. But
10 Plaintiff has not shown the exceptional circumstances that establish his need for use of
11 a pseudonym, and he has not shown he is in the type of danger typically required for
12 courts to consider permitting anonymous pleading. In contrast to the extreme
13 accommodation demanded by Plaintiff, Defendants seek no special treatment, only
14 that Plaintiff be required to plead in his true name as all litigants must do.

15 Like Plaintiff's *post hoc* rationalizations for his use of a pseudonym, Plaintiff's
16 recently-asserted claim for gender violence against Profitt Productions is contrived.
17 More importantly, it is legally deficient and should be dismissed. Plaintiff attempts to
18 implicate Profitt Productions by claiming the passive loan-out company somehow
19 *personally* committed the physical intrusion or force required for a claim of gender
20 violence. Besides the facial implausibility of those conclusory allegations, the
21 underlying gender violence statute also makes clear that Profitt Productions is not a
22 proper defendant for that claim. Nor has Plaintiff cited even a single case that
23 authorizes such a claim against an entity defendant such as Profitt Productions.

24 Accordingly, the Court should dismiss Plaintiff's First Amended Complaint in
25 its entirety due to Plaintiff's improper use of a pseudonym, and Plaintiff should be
26 required to plead in his real and complete name. Further, the Court should dismiss
27 without leave to amend the gender violence claim against Profitt Productions.

28

1 **II. LEGAL STANDARD**

2 Plaintiff's attempt to minimize the threshold he must meet to sufficiently allege
 3 a claim is unavailing. (Opp'n at 6-7.) To survive a motion to dismiss under Rule
 4 12(b)(6), a complaint must allege "enough facts to state a claim to relief that is
 5 plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
 6 ("Twombly"); *see also Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035,
 7 1041 (9th Cir. 2010). This "facially plausible" standard "is a screening mechanism
 8 designed to weed out cases that do not warrant either discovery or trial." *Atieh v.
 9 Riordan*, 727 F.3d 73, 76 (1st Cir. 2013).

10 As stated in *Twombly* (on which Plaintiff relies), "a plaintiff's obligation to
 11 provide the 'grounds' of his 'entitlement to relief' requires more than labels and
 12 conclusions, and a formulaic recitation of a cause of action's elements will not do.
 13 Factual allegations must be enough to raise a right to relief above the speculative level
 14 on the assumption that all of the complaint's allegations are true." *Twombly*, 550 U.S.
 15 at 556. A complaint should be dismissed under Rule 12(b)(6) where it fails to allege
 16 a "cognizable legal theory" or sufficient facts to support such a theory. *Caltex Plastics,
 17 Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016).

18 Here, besides the specific deficiency of Plaintiff's gender violence claim against
 19 Profitt Productions, Plaintiff's First Amended Complaint contains a fundamental
 20 defect because it does not identify the party bringing the claims, in violation of Rules
 21 10(a) and 17(a). A motion to dismiss under Rule 12(b)(6) is appropriately granted
 22 under such circumstances. *See, e.g., Doe v. Apstra, Inc.*, 2018 WL 4028679, at *2
 23 (N.D. Cal. Aug. 23, 2018) (recognizing district courts can dismiss complaint based on
 24 failure to comply with Rule 10(a)); *Roe v. State of New York*, 49 F.R.D. 279, 281
 25 (S.D.N.Y. 1970) ("[I]f a complaint does not identify any plaintiff in the title or
 26 otherwise, then its filing is ineffective to commence an action. The Court must be able
 27 to identify from the complaint at least one plaintiff by name; otherwise, no action has
 28 been commenced."). Likewise, a motion for a more definite statement under Rule

1 12(e) is a proper mechanism to require the disclosure of a plaintiff's identity where the
 2 plaintiff pleads under a pseudonym. *See, e.g., Heram v. United States*, 2014 WL
 3 3836912, at *1-3 (E.D. Cal. Aug. 1, 2014) (granting motion under Rule 12(e) and
 4 requiring plaintiff to file amended complaint that contains his actual name).¹

5 **III. PLAINTIFF FAILS TO SHOW THIS IS AN EXCEPTIONAL CASE FOR**
 6 **WHICH HIS USE OF A PSEUDONYM SHOULD BE ALLOWED, AND**
 7 **HIS FIRST AMENDED COMPLAINT IS DEFICIENT AND SHOULD**
 8 **BE DISMISSED AS A RESULT**

9 The Ninth Circuit recognizes that using a pseudonym contravenes the well-
 10 established requirements under Rules 10 and 17 that a party plead and prosecute a
 11 claim in his own name and “runs afoul of the public’s common law right of access to
 12 judicial proceedings.” *See Does I thru XXXIII v. Advanced Textile Corp.*, 214 F.3d
 13 1058, 1067 (9th Cir. 2000); *Doe v. Kamehameha Schools/Bernice Pauahi Bishop*
 14 *Estate*, 596 F.3d 1036, 1042 (9th Cir. 2010) (“The normal presumption in litigation is
 15 that parties must use their real names. . . . In this circuit, the common law rights of
 16 access to the courts and judicial records are not taken lightly.”). The Ninth Circuit
 17 therefore allows a party to proceed anonymously only in an “unusual case,” “when the
 18 party’s need for anonymity outweighs prejudice to the opposing party and the public’s
 19 interest in knowing the party’s identity.” *Advanced Textile*, 214 F. 3d at 1067-68; *see also Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992) (“It is the exceptional case in
 20 which a plaintiff may proceed under a fictitious name.”). Plaintiff’s opposition
 21 acknowledges the five factors courts consider in determining whether a plaintiff can
 22 establish the exceptional circumstances requiring an anonymous pleading, but he fails
 23 to provide evidence supporting his demand for anonymity.
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27 ¹ As stated in the Motion to Dismiss, if the Court does not dismiss
 28 Plaintiff’s FAC under Rule 12(b)(6), it should require Plaintiff to amend his
 pleading under Rule 12(e) to provide a more definite statement that includes his true
 and complete identity.

1 **A. Plaintiff Has Not Alleged Or Demonstrated That Any Threat Of**
 2 **Severe Harm Exists, That Any Such Fear Is Reasonable, Or That He**
 3 **Has Any Particular Vulnerability**

4 In his opposition, Plaintiff attempts to cobble together a threat of harm severe
 5 enough to try to justify his continued use of a pseudonym. But he provides no evidence
 6 of any threat of harm, why his claimed fear is reasonable, or any particular
 7 vulnerability – and certainly nothing rising to the exceptional circumstances
 8 warranting use of a pseudonym. Instead, he relies on baseless rumors and inadmissible
 9 tabloid reports or social media posts in unrelated matters, in a transparent attempt to
 10 prejudice the Court and the public against Mr. Fowler. *See, e.g., Doe v. Texaco, Inc.*,
 11 2006 WL 2850035, at *2-3 (N.D. Cal. Oct. 5, 2016) (finding inadmissible various
 12 newspaper articles being offered to show “[w]hether plaintiffs have an objectively
 13 reasonable fear of retaliation for filing this lawsuit”). All of Plaintiff’s claims of being
 14 in fear of a severe threat of harm fall flat.

15 First, Plaintiff claims his “work as a private masseuse makes him vulnerable to
 16 physical and economic injury.” (Opp’n at 8.) He claims he is vulnerable to physical
 17 injury because the nature of his work may potentially place him alone with a client in
 18 a house or hotel room. (*Id.*) But Plaintiff provides no evidence in his declaration or
 19 elsewhere supporting this claimed vulnerability. Instead, his declaration states: “I am
 20 and have been a massage therapist in and around the Los Angeles area for more than
 21 35 years. My clientele includes celebrity actors and models.” (ECF No. 19-1 at ¶ 2.)
 22 There is no evidence about how his clients are booked, what he or his employer do to
 23 schedule and intake clients or protect those in Plaintiff’s position, how often he works
 24 for “first-time clients,” why such purported vulnerability cannot be mitigated, or how
 25 or why the disclosure of his name in this lawsuit could aggravate such supposed
 26 susceptibility. Unlike cases involving a minor that may militate toward anonymity,
 27 Plaintiff is over sixty years old and has been a masseuse for over thirty-five years. (*Id.*
 28 at ¶ 4.) He has provided no evidence suggesting his supposed “stranger-danger”

1 concern is reasonable or that he is at more of a risk than any other plaintiff in his
 2 position.

3 Second, Plaintiff claims he is entitled to use a pseudonym simply because he
 4 fears some “economic harm.” (Opp’n at 9.) Plaintiff provides nothing more than the
 5 conclusory and unexplained statement in his declaration he is “concerned” that
 6 disclosure of his identity will “negatively impact my ability to support myself.” (ECF
 7 No. 19-1 at ¶ 4.) Most people rely on their incomes to support themselves, but that
 8 alone does not entitle Plaintiff to shield his identity. Plaintiff provides no authority
 9 supporting his contention that hypothetical economic harm entitles him to exceptional
 10 treatment. Nor does Plaintiff attempt to distinguish the numerous cases Defendants
 11 cited holding that any potential personal embarrassment, speculative economic harm,
 12 or desire for privacy fail to provide sufficient grounds to entitle a plaintiff to proceed
 13 anonymously. *See Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000)
 14 (“Ordinarily, those using the courts must be prepared to accept the public scrutiny that
 15 is an inherent part of public trials.”); *Doe v. Goldman*, 169 F.R.D. 138, 141 (D. Nev.
 16 1996) (“Courts have generally rejected attempts to proceed under fictitious names
 17 where plaintiffs are concerned solely with economic well-being and possible
 18 embarrassment or humiliation.”); *Doe v. Rostker*, 89 F.R.D. 158, 162 (N.D. Cal. 1981)
 19 (“That the plaintiff may suffer some embarrassment or economic harm is not enough.
 20 There must be a strong social interest in concealing the identity of the plaintiff.”).

21 Third, in a new attempt to prejudice the Court against Mr. Fowler, Plaintiff
 22 makes outlandish and incendiary claims about an internet video from December 2018.
 23 (Opp’n at 4-5, 9.) Specifically, Plaintiff conflates fact and fiction to claim that a video
 24 in which Mr. Fowler performs in character somehow is a disguised threat aimed at
 25 Plaintiff. Nothing in the video mentions anything about Plaintiff, his allegations, or
 26 this case. Nothing in the video is “[i]n apparent response to the serious allegations
 27 levied against him,” as Plaintiff claims in his opposition. (Opp’n at 4.) And, tellingly,
 28 Plaintiff did not mention this December 2018 video in his motion for leave to proceed

1 anonymously filed March 1, 2018, which only reinforces that his supposed fear
2 stemming from this YouTube video is a recent invention. (See ECF No. 19.) Most
3 importantly, the video was issued *before* Mr. Fowler was even served with the
4 complaint, and Plaintiff filed his initial complaint under the Doe pseudonym before
5 the video existed. The timing demonstrates the video could not have been directed at
6 Plaintiff even under Plaintiff's strained interpretation of it, and that Plaintiff's attempt
7 to use a pseudonym in his pleadings is unrelated to the video.

8 Plaintiff next references a news article about actor Anthony Rapp and the
9 supposed online comments he received after making allegations of decades-old sexual
10 advances by Mr. Fowler. (Opp'n at 3-4, 9.) Besides its irrelevance, the cited article
11 actually undermines Plaintiff's claim; in it, Rapp is quoted as stating the "vast majority
12 of [tweets] have been incredibly supportive," and he mentions *nothing* about any
13 physical harm or attack stemming from his accusations or those online comments.² If
14 negative comments made on social media could justify use of a pseudonym, no case
15 with even a modicum of publicity would be litigated under the parties' real names.
16 Appropriately, therefore, that is not the standard. As the Ninth Circuit recognized in
17 the context of affirming the denial of a party's attempt to plead anonymously, "many
18 times people say things anonymously on the internet that they would never say in
19 another context and have no intention of carrying out." *Kamehameha*, 596 F.3d at
20 1045 (affirming finding that minor plaintiffs' fear of retaliation was unreasonable
21 where threats of physical harm were directed at plaintiffs in internet postings and the
22 U.S. Attorney warned about increased threats of violence against children in plaintiffs'
23 position.).

24 Fourth, Plaintiff (or his counsel) tries to manufacture malevolence or threatening
25 behavior from Defendants' recent *ex parte* application. (Opp'n at 5, 10.) That *ex parte*
26 application was filed in response to Plaintiff's counsel's refusal to participate in the

² See Opp'n at 4, n.7, citing <https://www.broadwayworld.com/article/Anthony-Rapp-Calls-Out-Social-Media-Attacks-Post-Spacey-Exposure-20171129> (last visited on April 2, 2019).

1 required Rule 26(f) conference. (ECF No. 31.) Defendants' counsel did not abandon
 2 any "meet and confer" efforts and, in fact, the opposite is true. Defendants' counsel
 3 repeatedly attempted to schedule the Rule 26(f) conference for over a week before
 4 filing the *ex parte* application, and, after ignoring or brushing aside those efforts for
 5 several days, Plaintiff's counsel ultimately shut down the communications by stating
 6 in no uncertain terms they would not participate in the conference. (*See generally* ECF
 7 Nos. 31 & 31-1.)

8 Undeterred by the facts necessitating Defendants' *ex parte* application, Plaintiff
 9 supports his conspiracy theory by relying on a tabloid article to claim the *ex parte*
 10 application resulted from a meeting between Mr. Fowler and his counsel the day before
 11 the *ex parte* application was filed. (Opp'n at 5.) Based on the reporting of the alleged
 12 attorney-client meeting, and the date on which the *ex parte* application was filed,
 13 Plaintiff reaches the preposterous conclusion "that Defendant's *ex parte* was to
 14 appease demands from a high-profile client." (*Id.*) Although the mere existence of a
 15 meeting between a client and his attorney is not evidence of any wrongdoing, the
 16 article on which Plaintiff relies is false on many levels, including that the supposed
 17 meeting between Mr. Fowler and counsel of record **did not happen**. (Barron Supp.
 18 Decl., ¶ 2.) Moreover, it is absurd for Plaintiff to suggest an *ex parte* application filed
 19 in response to Plaintiff's refusal to comply with the Federal Rules of Civil Procedure
 20 is "telling" of a threatening personality. And the *ex parte* application's inclusion of a
 21 request that Plaintiff's identity be confidentially disclosed to Mr. Fowler's counsel
 22 pending the outcome of certain motions could not have been a surprise, as Mr.
 23 Fowler's counsel has been seeking disclosure of Plaintiff's identity since late January.
 24 (Barron Decl. (ECF No. 22-1), ¶ 4.)

25 In sum, Plaintiff's imagined threats and speculative claims – unsupported by
 26 any competent evidence – do not approach the rare circumstances that permit
 27 anonymity. *See, e.g., Doe v. Shakur*, 164 F.R.D. 359, 361-362 (S.D.N.Y. 1996)
 28

1 (finding sexual assault plaintiff could not maintain anonymity because her privacy
 2 concerns outweighed by other factors).

3 **B. Plaintiff Has Not Shown And Cannot Show His Use of A Pseudonym**
 4 **Will Not Prejudice Defendants, Who Will Be Severely Inhibited In**
 5 **Defending Against Plaintiff's Allegations If His Identity Remains A**
 6 **Secret**

7 In his opposition, Plaintiff does not claim Defendants will not be prejudiced by
 8 his use of a pseudonym, nor could he. Instead, he only claims Mr. Fowler will not be
 9 prejudiced by secrecy at this time because this case is “[a]t the pleading stage and
 10 discovery has not commenced.” (Opp’n at 11.) But it is not premature for Plaintiff to
 11 disclose his identity, which he continues to conceal even from Defendants.³ And the
 12 only reason discovery has not begun is because Plaintiff refuses to engage in the Rule
 13 26(f) conference that triggers the opening of discovery. *See* Fed. R. Civ. P. 26(d).
 14 When Defendants’ counsel attempted to engage in the required Rule 26(f) conference,
 15 Plaintiff’s counsel stonewalled and refused to participate. (ECF No. 31.) Given
 16 Plaintiff’s refusal, and approaching statutory deadlines, Defendants had no choice but
 17 to seek *ex parte* relief. Plaintiff’s obstructionist tactics are particularly inappropriate
 18 given his counsel attempted to serve written discovery and noticed Mr. Fowler’s
 19 deposition before Mr. Fowler had even appeared in this case to remove it to federal
 20 court. (Barron Decl. (ECF No. 37-1) at ¶ 8.) Plaintiff cannot justify withholding his
 21 identity because discovery has not commenced when he is the one who has prevented
 22 that procedural trigger and he already attempted to conduct discovery of his own
 23 before removal.

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26 ³ Since late January, Mr. Fowler’s counsel has consistently asked
 27 Plaintiff’s counsel to disclose Plaintiff’s identity. And while maintaining that
 28 Plaintiff must plead in his own name, Mr. Fowler’s counsel offered to keep
 Plaintiff’s identity confidential to allow it to be disclosed to counsel immediately.
 But Plaintiff’s counsel has consistently dragged their feet or outright ignored these
 requests without explanation. Plaintiff still has not disclosed his identity to defense
 counsel.

To suggest he should be allowed to continue using a pseudonym, Plaintiff makes gratuitous references to an unrelated criminal matter in another state, and speculates that Mr. Fowler will seek a stay or invoke the Fifth Amendment because of it. But Mr. Fowler has not sought to stay this case or invoked his Fifth Amendment rights. To the contrary, Mr. Fowler pressed for the Rule 26(f) conference that would have *opened* discovery. Moreover, Plaintiff's concerns are irrelevant to whether Plaintiff must litigate in his own name as required.

Plaintiff's repeated justification for secrecy – that this case is at the pleading stage – is nonsensical. The case was filed over six months ago. The alleged assault occurred over two-and-a-half years ago. During that time, Plaintiff has had time to investigate, develop, and plan his anticipated prosecution of this case. Meanwhile, Plaintiff's concealment deprives Mr. Fowler of the same opportunity to prepare his defense. And Plaintiff's pleading in his own name is critical to Mr. Fowler's ability to prepare a defense, as use of a pseudonym would complicate and inhibit third-party discovery. Further, it prevents possible unknown third parties with information about Plaintiff and his factual allegations from offering information relevant to Mr. Fowler's defense. *See, e.g., Doe v. Del Rio*, 241 F.R.D. 154, 159 (S.D.N.Y. 2006) (“[C]oncealing the name of a party could deprive a litigant and the court of a chance that a yet unknown witness would, upon learning that fact about the case, know to step forward with valuable information about the events or the credibility of witnesses.”).

C. Plaintiff Ignores The Public Interest That Requires Plaintiff To Plead In His Own Name Here, and Instead Suggests A New Standard That Would Allow Most Claimants to Litigate Under A Pseudonym

Finally, Plaintiff dismisses and ignores the strong public interest in open proceedings. *See, e.g., Kamehameha*, 596 F.3d at 102 (“In this circuit, the common law rights of access to the courts and judicial records are not taken lightly.”); *Doe v. Texaco*, 2006 WL 2850035, at *6 (N.D. Cal. Oct. 5, 2006) (“When anyone – local or foreign – invokes the potential power and authority of a United States District Court,

1 the public has a legitimate right to know on whose behalf their institutions are being
 2 used, unless good cause to do otherwise is shown.”); *Shakur*, 164 F.R.D. at 361 (a
 3 party’s privacy concerns cannot overcome the “paramount importance of open
 4 courts”). Instead, he claims Defendants have not made a showing under this factor
 5 while ignoring that Plaintiff has the burden of establishing this is an extreme case that
 6 justifies anonymity.

7 Plaintiff tries to evade the requirement of open courts by making generalized
 8 statements about encouraging victims to come forward, and for cases to be decided on
 9 the merits. But requiring Plaintiff to comply with the longstanding rules of this forum
 10 does not undermine either goal, especially given there is no legitimate threat of harm
 11 against him. Mr. Fowler has a right to face his accuser and vindicate his name in a
 12 public proceeding. *See, e.g., Kamehameha*, 596 F.3d at 1042. Those rights are not
 13 undermined or discarded simply because Mr. Fowler is a famous actor. And the
 14 erosion of the well-established standards for public access demanded by the Federal
 15 Rules and controlling authorities will open the door for nearly any claim against a
 16 public figure to be litigated outside the public view.

17 **IV. PLAINTIFF DOES NOT AND CANNOT ESTABLISH THAT THE**
FAC ALLEGES A FACIALLY PLAUSIBLE CLAIM FOR GENDER
VIOLENCE AGAINST PROFITT PRODUCTIONS, WHICH IS AN
IMPROPER DEFENDANT FOR THAT CLAIM

21 Separate from his deficient pleading due to the use of a pseudonym, Plaintiff’s
 22 claim for gender violence against Profitt Productions fails as a matter of law and should
 23 be dismissed.⁴ In his opposition, Plaintiff barely addresses this point and instead

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 26 ⁴ As set forth in Mr. Fowler’s motion for misjoinder, Profitt Productions
 27 should not be joined as a party even in the unlikely event the lone claim against it
 28 were sufficient to survive a motion to dismiss. *See, e.g., Clinco v. Roberts*, 41 F.
 Supp. 2d 1080, 1088 (C.D. Cal. 1999) (rejecting post-removal joinder of non-
 diverse party even though plaintiff “might survive a motion to dismiss because of
 the liberal pleading rules”).

1 simply claims Profitt Productions has been provided “fair notice” of the claim against
 2 it. (Opp’n at 13-14.)

3 But Plaintiff’s shifting legal theory is fatally flawed. As pointed out in the
 4 opening brief, the gender violence statute specifically disallows any type of vicarious
 5 or indirect liability. *See, e.g.*, Cal. Civ. Code § 52.4(e); *Jones v. Kern High School*
 6 *Dist.*, 2008 WL 3850802, at *29 (E.D. Cal. Aug. 14, 2008) (recognizing “the
 7 proscription against vicarious liability set forth in Section 52.4(d) [now Section
 8 52.4(e)].”); *Doe v. Starbucks, Inc.*, 2009 WL 5183773, at *10-11 (C.D. Cal. Dec. 18,
 9 2009) (rejecting available of gender violence claim under a “ratification” theory).
 10 Plaintiff now claims Profitt Productions is “directly, not vicariously, liable,” (*see*
 11 Opp’n at 14), because it *personally* used physical force, or committed an intrusion onto
 12 or invasion of Plaintiff, as required for a gender violence claim. *See* Cal. Civ. Code
 13 § 52.4(c), (e). But Plaintiff cites no case in which the gender violence statute was
 14 applied against a corporate entity or an alter ego, as Plaintiff attempts to do here.⁵ Nor
 15 has Defendants’ counsel found any case permitting a claim in those circumstances.
 16 And the statutory language suggests only natural persons, not entities, can be a target
 17 of the claim because only natural individuals can “personally” commit the physical
 18 force, intrusion, or invasion necessary to state a claim. *See, e.g.*, Black’s Law
 19 Dictionary (10th ed. 2014) (defining “person” as “A human being”).

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⁵ Further, any alter ego liability theory makes no sense and would only reinforce why Profitt Productions is *not* a necessary or party defendant. The alter ego theory holds individual shareholders liable for the acts of the corporation without the shield of the corporate form. Although not clearly articulated, Plaintiff seeks to invert the theory, and hold the corporation liable for the acts of Mr. Fowler. That is not how alter ego liability works, and Plaintiff provides no support for applying a “reversed” alter ego theory. Moreover, a required element of the alter ego theory is that “there must be an inequitable result if the acts in question are treated as those of the corporation alone.” *Shaoxing County Huayue Import & Export v. Bhaumik*, 191 Cal. App. 4th 1189, 1198 (2011). Plaintiff fails to satisfy that element here, since Mr. Fowler is already a party and the one from whom Plaintiff seeks relief directly.

V. CONCLUSION

In sum, Plaintiff has not established, and cannot establish, that this is an exceptional case justifying his pleading anonymously. All of his claims, therefore, should be dismissed, or, alternatively, he should be required to amend his pleading to provide a more definite statement disclosing his full and complete identity. Separately, Plaintiff's claim for gender violence against Profitt Productions should be dismissed without leave to amend, because the allegations cannot support any viable claim against that entity.

Respectfully submitted,

10 | Dated: April 2, 2019

KELLER/ANDERLE LLP

By: /s/ Jennifer L. Keller

Jennifer L. Keller

Chase A. Scolnick

Jay P. Barron

Attorneys for Defendant

Kevin Spacey Fowler

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 and not a party to the within action. My business address is 18300 Von Karman Avenue, Irvine, California 92612-1057. On **April 2, 2019**, I served the foregoing document described as

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS
PLAINTIFF JOHN DOE'S CLAIMS OR, ALTERNATIVELY, TO REQUIRE
PLAINTIFF TO PROVIDE A MORE DEFINITE STATEMENT**

on the following-listed attorneys who are not on the list to receive e-mail notices for this case (who therefore require manual notice) by the following means of service:

SERVED BY U.S. MAIL: There are currently no individuals on the list to receive mail notices for this case.

SERVED BY CM/ECF. I hereby certify that, on **April 2, 2019**, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. The filing of the foregoing document will send copies to the following CM/ECF participants:

The following are those who are currently on the list to receive e-mail notices for this case.

Genie Harrison, genie@genieharrisonlaw.com
Amber Phillips, amber@genieharrisonlaw.com
Mary Olszewska, mary@genieharrisonlaw.com

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on **April 2, 2019** at Irvine, California.

/s/ Courtney L. McKinney

Courtney L. McKinney